

the district court an information against the DeLuca Olive Oil Co., Inc., New York, N. Y., and Arthur J. Capone, president and treasurer of the company, charging that said defendants had shipped in interstate commerce from New York, N. Y., the following lots of olive oil, which was adulterated and misbranded: One shipment into the State of Rhode Island on or about June 28, 1935; several shipments into the State of Massachusetts on or about July 5, August 9, 24, and 27, September 11, 19, 20, and 27, October 31, November 15, 1935, January 7, 9, and 10, February 4, and February 13, 1936; two lots into the State of Connecticut on or about September 28, 1935, and February 14, 1936; one lot into the State of Maine on or about November 6, 1935; and several lots into the State of Pennsylvania on or about January 3, 20, 28, and 31, and February 14, 1936.

The article was labeled in part variously: "Pure olive oil * * * De Luca Brand * * * Guaranteed by De Luca Olive Oil Co., Inc., New York City"; "Cora Pure Imported Olive Oil * * * Guaranteed by Cora Products Co., New York, N. Y."; "Olivo D' Oliva Marca De Luca * * * De Luca & Co., New York & Geneva"; "Pure Imported Olive Oil De Luca Brand * * * De Luca & Co., New York"; "United Brand * * * Pure Imported Olive Oil * * * United Wholesale Grocery Co., Distributor Worcester Mass."; "Clover Farm Brand Pure Imported Olive Oil * * * Clover Farm Stores Distributors * * * Cleveland, Ohio."

The article was alleged to be adulterated in that tea-seed oil had been substituted in part for olive oil, which it purported to be, and in that tea-seed oil had been mixed and packed with it so as to reduce or lower its quality and strength.

It was alleged to be misbranded in that the following statements and designs borne on the cans and bottles, "Pure Olive Oil De Luca * * * The Best Quality Imported from Italy * * * This Olive Oil is guaranteed to be absolutely pure under chemical analysis because it is pressed only from selected ripe olives * * * Puro Olio Di Oliva De Luca * * * Qualita Sublimi Importato dall Italia * * * Questo Olio di Oliva e garantito puro sotto qualsiasi analisi chimica perche ricavato soltanto da olive mature scelte e confezionato nelle migliori condizioni igieniche [design of olive branches]" with respect to certain lots; the statements, "Pure imported Olive Oil * * * Importato Puro Olio d'Oliva * * * This Olive Oil is guaranteed to be absolutely pure and indisputably better than that of any other origin both for its natural goodness and exceptional purity. * * * Questo olio a garantito di para oliva e indiscutibilmente superiore a quello di qualsiasi altra origine sia per la sua naturale bonta che per la sua speciale raffinatezza [design of olive branches]" with respect to certain lots, the statements "Olio D'Oliva * * * De Luca * * * Pure Olive Oil" with respect to certain lots; "Pure Imported Olive Oil * * * De Luca * * * Olivo D'Oliva * * * De Luca * * * Pure Olive Oil" with respect to certain lots; the statement "Pure Imported Olive Oil" with respect to certain other lots were false and misleading; and were borne on the labels of the cans and bottles containing the article so as to deceive and mislead the purchaser; since they represented that the article consisted wholly of olive oil and that portions thereof consisted of olive oil imported from Italy; whereas the article consisted in part of tea-seed oil not imported from Italy. It was alleged to be misbranded further for the reason that it was a mixture composed in part of tea-seed oil and was offered for sale and sold under the distinctive name of another article.

On August 2, 1937, pleas of guilty were entered on behalf of the defendants and on October 13, 1937, the court fined the defendant company \$2,200 but suspended payment of \$2,100 thereof, and fined Arthur J. Capone \$1,100 and suspended payment of \$550 thereof.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

27754. Adulteration and misbranding of olive oil. U. S. v. A. J. Capone Co., Inc., and Arthur J. Capone. Pleas of guilty. Corporation fined \$1,400 of which \$1,300 was remitted. Arthur J. Capone fined \$700 of which \$350 was remitted. (F. & D. No. 38007. Sample Nos. 55262-B, 55546-B to 55550-B, incl., 57018-B, 57201-B, 57202-B, 57203-B, 62311-B, 66040-B, 66041-B, 66042-B.)

This product was adulterated with tea-seed oil.

On February 25, 1937, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the A. J. Capone Co., Inc., New York, N. Y., and Arthur J. Capone, president of the company, alleging shipment by said defendants in violation of the Food and Drugs Act on or about October 31, 1935,

from the State of New York into the State of Massachusetts on or about December 18, 1935, and January 18, 1936, from the State of New York into the State of Illinois; on or about January 31, 1936, from the State of New York into the State of Michigan, and on or about February 6, 1936, from the State of New York into the State of Texas of quantities of olive oil that was adulterated and misbranded. Portions of the article were labeled: "Cora Brand * * * Pure Imported Olive Oil * * * Guaranteed by Cora Products Co. Sole Distributors New York, N. Y." The remaining lots were labeled: "Tivoli Brand * * * Puro d'Oлива [or "Pure Imported Olive Oil"] Distributed by Garofalo Bros. Co., Chicago, Ill."

The article was alleged to be adulterated in that a substance, tea-seed oil, had been substituted wholly or in part for olive oil, which it was represented to be and in that tea-seed oil had been mixed and packed with it so as to reduce or lower its quality or strength.

It was alleged to be misbranded (1) in that it was offered for sale under the distinctive name of another article, namely, olive oil; (2) in that the following statements and designs on the cans and bottle labels, "Pure Imported Olive Oil * * * Importato Puro Olio d'Oлива * * * This Olive Oil is guaranteed to be absolutely pure and indisputably better than that of any other origin, both for its natural goodness and exceptional purity * * * Questo Olio e garentito di pura Oliva E indiscutibilmente superiore e quello d'qualsiasi altra origine sia per la sua naturale bonta che per la sua speciale raffinatezza [designs of olive branches]," with respect to portions of the article; the statements "Pure Imported Olive Oil Tivoli Brand Puro Olio D'Oлива Importato * * * Tivoli Brand Olive Oil is guaranteed to be one of the finest olive oils. The olive oil contained in this can is pressed from fresh picked, ripe and selected olives. It is an absolutely pure product, highly recommended * * * L' Olio Continuto un questa latta é estratto da olive fresche, mature, ed accuratamente scelte. Esso é garentito di essere uno dei migliori olii d'oliva, é un prodotto assolutamente puro, ed é altamente, raccomandato per usi da tavola, e scopi medicinali [designs of olive trees and woman harvesting olives]," with respect to portions of the articles; the statement "Pure Olive Oil" with respect to a portion; and the statement "Pure Olive Oil Imported" with respect to the remainder, were false and misleading in that they represented that the article was olive oil; and (3) in that by means of the said statements and designs, the article was labeled so as to deceive and mislead the purchaser.

On August 2, 1937, pleas of guilty were entered on behalf of the defendants and on October 13, 1937, the court imposed a fine against the corporation of \$1,400 and remitted payment of \$1,300 thereof, and imposed a fine of \$700 against Arthur J. Capone and remitted payment of \$350 thereof.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

27755. Adulteration and misbranding of butter. U. S. v. S. B. Walker. Plea of guilty. Fine, \$25. (F. & D. No. 38061. Sample No. 73890-B.)

Samples of this product were found to contain less than 80 percent by weight of milk fat and to be short of the declared weight.

On September 27, 1937, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the district court an information against S. B. Walker, Hereford, Tex., alleging shipment by said defendant in violation of the Food and Drugs Act as amended, on or about June 29, 1936, from the State of Texas into the State of New Mexico of a quantity of butter that was adulterated and misbranded. It was labeled in part: (Package) "Pure Creamery Butter One Pound"; (wrapper) "Farmers' Creamery Association Fresh Cream O'Plains Creamery Butter Hereford Texas."

The article was alleged to be adulterated in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which should contain not less than 80 percent of milk fat as prescribed by the act of Congress of March 4, 1923, which the article purported to be.

It was alleged to be misbranded in that the statements "Butter" and "One Pound," borne on the package, and "¼ Pound Net Weight," borne on the wrapper, were false and misleading and were borne on the package and wrapper so as to deceive and mislead the purchaser, in that they represented that the article was butter—a product which should contain not less than 80 percent by weight of milk fat—that each of the packages contained 1 pound and that each of the wrappers contained ¼ pound thereof; whereas it contained less than 80 percent by weight of milk fat, the packages contained less than 1